

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
THE MULCH COMPANY, LLC)	
)	
)	
)	
RESPONDENT)	CASE NO. 07-0126
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Division of Water Pollution Control,
and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the “division”) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

II.

The Mulch Company, LLC (hereinafter the "Respondent") is a domestic limited liability company licensed to do business in Tennessee. The Respondent owns and operates a mulch manufacturing, storage, and sales operation (hereinafter the “site”) in

Nashville, Tennessee. Service of process may be made on the Respondent through its registered agent, Anthony Emmanuel, 665 Vernon Avenue, Nashville, Tennessee 37209.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3–4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

The unnamed tributary to Richland Creek, referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” this water body has been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

T.C.A. § 69-3-108 requires a person to obtain coverage under a permit prior to discharging any substance to waters of the state, or to a location from which it is likely that the discharged substance will move into waters. Coverage under the Tennessee Multi-Sector General Permit for storm water discharges associated with industrial activities (hereinafter the “TMSP”) may be obtained by submittal of a Notice of Intent (NOI).

FACTS

VII.

On January 2, 2002, the Respondent applied to the division for coverage under the TMSP for storm water discharges associated with industrial activity. On March 8, 2002, the Respondent was issued coverage and assigned Tracking Number TNR053751. Under the permit the Respondent is authorized to “discharge storm water runoff associated with

industrial activity”. Storm water discharges from the site drain to an unnamed tributary to Richland Creek in Davidson County, Tennessee.

Requirements of the TMSP include, but are not limited to, developing a Storm Water Pollution Prevention Plan (SWPPP), performing and retaining records of quarterly visual inspections of storm water outfalls, maintaining Best Management Practices (BMPs) to reduce pollutants present in storm water discharges associated with industrial activity, and the annual monitoring and reporting of concentrations of specified pollutants present in storm water discharges from the site.

VIII.

On March 12, 2007, division personnel conducted an investigation in response to a complaint that contaminated storm water was being discharged from the site. It was discovered that the Respondent was also conducting operations at an additional 2 acre location on Duluth Avenue that did not have permit coverage under the TMSP. Division personnel inspected this location and observed that no Best Management Practices (BMPs) were being utilized to control storm water runoff from the product stockpiles or to reduce the level of pollutants in storm water discharges from the site.

A permit compliance review was conducted at the location with TMSP coverage, and additional violations and deficiencies were discovered. The Storm Water Pollution Prevention Plan (SWPPP) was not available for review at the facility, and no records or documentation related to quarterly visual inspections, annual comprehensive site reviews, or storm water sampling and analysis could be located.

IX.

On March 26, 2007, the division issued a Notice of Violation (NOV) to the Respondent detailing the violations observed during the March 22, 2007, complaint investigation. The NOV instructed the Respondent to submit, within 30 days of receiving the NOV, a Corrective Action Plan (CAP) addressing the violations noted during the complaint investigation and the corrective actions that would taken to bring the facility into compliance with the permit.

X.

During the course of investigating this matter, the division incurred damages in the amount of FIVE HUNDRED SIXTEEN DOLLARS AND THIRTY NINE CENTS (\$516.39).

VIOLATIONS

XI.

By failing to comply with the requirements of the Tennessee Multi-Sector General Permit for storm water discharges associated with industrial activities, the Respondent has violated T.C.A. §§ 69-3-108(b) and 69-3-114(b).

§ 69-3-108 states, in part:

- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
 - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114 states, in part:

- (b) In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part

ORDER AND ASSESSMENT

XII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. As soon as possible, but no later than 30 days of receipt of this Order, the Respondent shall implement appropriate Best Management Practices to assure compliance with the terms and conditions of the permit. Documentation that Best Management Practices have been implemented is to be sent to the Water Pollution Control manager at the Nashville Environmental Field Office (NEFO)

at 711 R.S. Gass Boulevard, Nashville, Tennessee 37243, and to the manager of the Enforcement and Compliance Section (E&C) of Water Pollution Control at 6th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243.

2. The Respondent shall maintain appropriate Best Management Practices to assure the reduction of pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of the permit.
3. The Respondent shall, within 30 days of receipt of this Order, submit to the division's Water Pollution Control manager at the NEFO a completed NOI to obtain coverage under the TMSP for the unpermitted portion of the site. If the Division finds the submission incomplete or otherwise unacceptable, the Respondents shall, within thirty (30) days of receipt of such notification, make suggested revisions and modifications as directed by the Division and resubmit for review and approval.
4. The Respondent shall, within 30 days of receipt of this Order, submit an updated SWPPP for review and approval to the Water Pollution Control manager at the NEFO and a copy to the E&C manager at the addresses above.
5. The Respondent is hereby assessed a CIVIL PENALTY in the amount of ELEVEN THOUSAND DOLLARS (\$11,000.00), payable as follows:

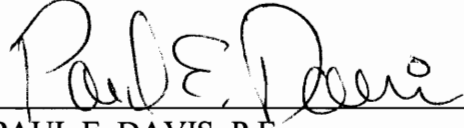
- a. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).
 - b. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division in the event the Respondent fails to comply with Item 1 above, to be paid within 30 days of default.
 - c. The Respondent shall pay TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to the division in the event the Respondent fails to comply with Item 2 above, to be paid within 30 days of default.
 - d. The Respondent shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondent fails to comply with Item 3 above, to be paid within 30 days of default.
 - e. The Respondent shall pay ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the division in the event the Respondent fails to comply with Item 4 above, to be paid within 30 days of default
6. The Respondent is hereby assessed DAMAGES in the amount of FIVE HUNDRED SIXTEEN DOLLARS AND THIRTY NINE CENTS (\$516.39) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on this 22nd day of May 2007.



PAUL E. DAVIS, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the director at the address below a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment.

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to “Treasurer, State of Tennessee,” and sent to the Tennessee Department of Environment and Conservation, Division of Water Pollution Control - Enforcement & Compliance Section, 6th Floor L&C Annex, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, at the address above. All payments and correspondence should include the Respondent’s name and case number as shown on the first page of this Order and Assessment.